Tri-State Aero, Inc. and Chauffeurs, Teamsters, & Helpers Local Union No. 215, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 25-RC-7761

July 19, 1982

## **DECISION AND ORDER**

## By Chairman Van de Water and Members Fanning and Zimmerman

Pursuant to a Stipulation for Certification Upon Consent Election, an election by secret ballot was conducted on November 30, 1981, under the direction and supervision of the Regional Director. Thereafter, the Employer filed a timely objection to the election, contending that the National Labor Relations Board does not possess jurisdiction over the Employer. Pursuant to the Board's Rules and Regulations, Series 8, as amended, the Acting Regional Director then conducted an investigation of the objection and, concluding that the objection raised the question of the Board's jurisdiction over the Employer, issued on January 29, 1982, a "Report on Objections, Order Directing Hearing, and Notice of Hearing." Accordingly, a hearing was held on February 24, 1982, before Hearing Officer Sharon Ballin. Subsequent thereto, on March 2, 1982, the Acting Regional Director transferred the case to the National Labor Relations Board for decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in the case, the Board finds:

The Employer is an Indiana corporation engaged in Evansville, Indiana, in the business of providing air taxi and charter services, flight training, aircraft fueling and maintenance, and aircraft sales and storage. The record establishes that the Employer receives annual gross revenues in excess of \$500,000 and makes annual purchases of goods and services valued in excess of \$50,000 directly from points located outside the State of Indiana.

The Employer contends that the instant petition should be dismissed because the Employer is not an "employer" within the meaning of the National Labor Relations Act, as amended. The Petitioner, on the other hand, contends that jurisdiction is properly with the National Labor Relations Act. Alternatively, the Petitioner contends that the Employer should be estopped from claiming jurisdiction is not properly with the National Labor Relations Board because of the failure to have raised such an issue prior to the election.

Section 2(2) of the Act provides in pertinent part that the term "employer" as used in the National Labor Relations Act should not include any person subject to the Railway Labor Act.

Accordingly, because of the nature of the jurisdictional question presented here, we requested the National Mediation Board to study the record in this case and to determine the applicability of the Railway Labor Act to the Employer. In reply, we were advised by the National Mediation Board that the board had concluded that:

Based on the documents in this case, the (National Mediation) Board is of the opinion that Tri-State Aero is subject to the provisions of the Railway Labor Act.<sup>1</sup>

In view of the foregoing, we shall set aside the election of November 30, 1981, and dismiss the instant petition.

## ORDER

It is hereby ordered that the election of November 30, 1981, be, and it hereby is, set aside.

It is further ordered that the petition in Case 25-RC-7761 be, and it hereby is, dismissed.

<sup>1</sup> Tri-State Aero, Inc., 9 NMB No. 100 (1982).